

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES V. CAICO,

Plaintiff,

No. CIV S-02-1608 MCE GGH P

vs.

D. L. RUNNELS, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

For the following reasons, the court recommends that defendant Gaulden be dismissed.

On October 28, 2003, the court ordered the U.S. Marshal to serve defendant Gaulden. On November 18, 2003, service as to defendant Gaulden was returned unexecuted because plaintiff had not provided sufficient information to effect service. On November 23, 2003, the court granted plaintiff sixty days to submit additional information for service of defendant Gaulden. On May 14, 2004, the court granted plaintiff an additional thirty days to submit this information.

Plaintiff finally submitted the documents necessary to effect service on January 10, 2005. On January 28, 2005, the court ordered the U.S. Marshal to again attempt service of defendant Gaulden. On August 30, 2005, service was again returned unexecuted. The

1 documents attached to the returned USM-285 form indicate that defendant Gaulden left state  
2 service on January 4, 2001. Attempts to contact him via the last telephone number listed in his  
3 personnel records were unsuccessful because the number had been disconnected.

4 Because defendant Gaulden cannot be located, he cannot be served with process  
5 in this action. For that reason, the court recommends that defendant Gaulden be dismissed.

6 IT IS HEREBY RECOMMENDED that defendant Gaulden be dismissed.

7 These findings and recommendations are submitted to the United States District  
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
9 days after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
12 shall be served and filed within ten days after service of the objections. The parties are advised  
13 that failure to file objections within the specified time may waive the right to appeal the District  
14 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: 10/6/05

16 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE

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ca1608.dis  
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